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ABSTRACT

Published for the guidance of employers, employees, and others interested in equal employment opportunity, this pamphlet explains the federal laws relating to nondiscrimination in private and public employment. Procedures for filing a complaint of employment discrimination are included, and pertinent government legislation is detailed. Affirmative steps toward equal employment opportunity are delineated. (AG)

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EQUAL EMPLOYMENT OPPORTUNITY UNDER FEDERAL LAW:

A Guide to Federal Law Prohibiting Discrimination on Account of Race, Religion, Sex, or National Origin in Private and Public Employment

U.S. Commission on Civil Rights
Clearinghouse Publication No. 17
1971

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This publication explains the Federal law of nondiscrimination in private and public employment. It is published for the guidance of employers, employees, and others interested in equal employment opportunity.

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;
- Appraise Federal laws and policies with respect to equal protection of the laws;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and
- Submit reports, findings, and recommendations to the President and the Congress.

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ED 067476

EQUAL EMPLOYMENT OPPORTUNITY UNDER FEDERAL LAW:

A Guide to Federal Law Prohibiting Discrimination on Account of Race, Religion, Sex, or National Origin in Private and Public Employment

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No man can be fully free while his neighbor is not. To go forward at all is to go forward together.
This means black and white together, as one Nation, not two. The laws have caught up with our conscience. What remains is to give life to what is in the law.

President Richard M. Nixon

We have waited for more than 340 years for our Constitutional and God-given rights. . . . I hope, sirs, you can understand our legitimate and unavoidable impatience.

Rev. Martin Luther King, Jr.

And of course these are people of which we speak—not simply figures and averages. They are people with families and needs and they are American citizens entitled to certain rights. . . . We must eradicate the patterns set through long discriminatory practices.

Vicente T. Ximenes

I
The Duty Of Nondiscrimination

Federal law prohibits employment discrimination by employers, labor unions, and others. This prohibition includes, but is not confined to, deliberate acts of discrimination.

Deliberate discrimination is but the tip of an iceberg. Existing racial and ethnic divisions in society have translated themselves into institutions which deny equal opportunity to minority persons. Similarly, traditional and outmoded views of the role of women give rise to widespread patterns of employment discrimination on the basis of sex. One of the most pervasive forms of employment discrimination is "systemic discrimination"—discriminatory practices built into the systems and institutions which control access to employment opportunity.

The following are some common examples of these discriminatory barriers to equal employment opportunity.

- Particularly where an employer or union relies for recruitment mainly upon word-of-mouth contact, minority persons who have less access than nonminority persons to informal networks of employment information, such as through present employees or officials, are denied equal access to available opportunities.
- Recruitment in schools or colleges with a predominantly nonminority makeup is discriminatory where comparable recruitment is not done in predominantly minority institutions.
- Rules against employment of married women and rules providing for the automatic termination of employment upon pregnancy frequently amount to unwarranted discrimination against women.
- Advertising in "male" and "female" help-wanted columns where sex is not a bona fide occupational qualification unfairly limits employment opportunities for women.
- Job qualifications which are not substantially related to job requirements unfairly penalize minority persons with limited education or job experience.
- Where minority employees have been assigned to "traditional jobs" or departments, which do not afford equal access to opportunities for training or advancement within the organizations, this presents

a continuing barrier to their equal enjoyment of employment opportunity.

- A past history of discriminatory practices continues to deter minority applications until the employer has clearly demonstrated that equal employment opportunity is being achieved.

Such barriers to equal employment persist until positive action is taken to correct them. Therefore, nondiscrimination in employment in most cases can be achieved only through an affirmative effort to assure that practices are nondiscriminatory. For example, an employer can assure that his recruitment practices are nondiscriminatory only by taking affirmative steps to assure that potential minority applicants are reached as effectively as potential nonminority applicants. Similarly, an employer can assure nondiscrimination in the training and advancement of employees only by assurng that minority employees have not become locked into jobs or departments which do not afford equal opportunity for advancement.

Expressed above in terms of industrial employment, the same principles also apply to employment in the construction industry. Because minority persons have been widely excluded from construction trades by the discriminatory—including nepotistic—practices of construction labor unions, so a construction contractor, in order to avoid the use of a discriminatorily selected labor force, must take steps to assure fair minority representation on the job.

II
Filing A Complaint Of Employment Discrimination

The following are some general guidelines for filing complaints of discrimination in employment under Federal law on account of race, religion, sex, or national origin. Subsequent sections of this booklet contain a more detailed discussion of the Federal laws involved.

A person who believes he has been subject to employment discrimination may have a number of different rights or remedies under Federal law. Ideally, his first step is to get an attorney's advice on his rights. At the same time, factors such as the deadline for filing complaints may make it necessary for the person to file his complaint without first consulting an attorney.

When To File

Federal laws and regulations dealing with employment discrimination provide varying time limits for filing complaints. Some of these are given in the following chart. As long as the discrimination being complained of continues, there is no time limit for filing a complaint. But once the discrimination has stopped, the complaint must be filed within the specified time period thereafter. Since late filing may be excused in some cases, a person who believes the time limit has passed may nonetheless wish to file the complaint, and state the reasons for the late filing. Even if the Federal agency is unable to handle the complaint because it is late, the agency may be able to suggest alternative remedies.

Where To File

As a general rule, where Federal law gives more than one remedy, separate complaints should be sent to every agency that might have jurisdiction over it. This is particularly true where a person, with only limited time in which to file, is not absolutely sure which Federal agency is the proper or best one to handle his complaint. Also, where more than one Federal agency does have jurisdiction over the complaint, combined enforcement efforts—involving the possibility of several different sanctions—may produce quicker or more effective remedies for the person discriminated against.

In general, a person complaining of discrimination by a private employer should send his complaint to the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance, and the National Labor Relations Board (see accompanying chart).

If they wish, persons may, instead or in addition, send their complaint to

The United States Commission on Civil Rights
Washington, D.C. 20425

and request that the Commission forward the complaint to the proper agencies.

The following chart provides basic information on Federal laws and regulations against employment discrimination and the addresses to which complaints should be sent.

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Persons Covered	Federal Law	Send Complaints To
PRIVATE EMPLOYMENT		
• Applicants, employees, or others discriminated against by private employers which have 25 or more employees, by employment agencies, or by labor unions.	Title VII of the Civil Rights Act of 1964. (Time limit for complaints: 90 days). (Page 7 of this booklet).	The Equal Employment Opportunity Commission Washington, D.C. 20506 [Or the appropriate regional office].
• Applicants, employees, or others discriminated against by employers which have contracts or subcontracts with the Federal Government or are engaged in federally assisted construction, or by unions dealing with such employers.	Executive Order 11246 as amended by Executive Order 11375. (Time limit for complaints: 180 days). (Page 11 of this booklet).	Office of Federal Contract Compliance United States Department of Labor Washington, D.C. 20210
• Employees or union members covered by the National Labor Relations Act, discriminated against by an employer or by a union.	National Labor Relations Act. (Time limit for complaints: 6 months). (Page 14 of this booklet).	The General Counsel National Labor Relations Board Washington, D.C. 20570 [Or the appropriate regional office].
• Applicants, trainees, or apprentices in training programs registered by the Bureau of Apprenticeship and Training.	Regulations issued by the United States Department of Labor. (Page 17 of this booklet).	The Bureau of Apprenticeship and Training United States Department of Labor Washington, D.C. 20210 [Or the appropriate field office].
• Employees covered by the Fair Labor Standards Act.	Fair Labor Standards Act of 1938 as amended by the Equal Pay Act of 1963. (Page 17 of this booklet).	The Wage and Hour and Public U.S. Contract Division Department of Labor Washington, D.C. 20210 [Or the appropriate field or regional office.]
PUBLIC EMPLOYMENT		
• Employees of the Federal Government.	Executive Order 11478; Civil Service Commission regulations. (Time limit for complaints: 15 days). (Page 19 of this booklet).	The equal employment opportunity counselor of the employee's agency.
• Employees of State or local governments with merit systems of personnel administration.	Federal and State merit system regulations. (Time limit for complaints: set by State or local rule) (Page 21 of this booklet).	Responsible State or local authority. (Page 21 of this booklet).
• Employees of State or local government agencies which are participating in work under Federal contract or in federally assisted construction.	Order 11246 as amended by Order 11375. (Time limit for complaints: 180 days). (Page 22 of this booklet).	Office of Federal Contract Compliance United States Department of Labor Washington, D.C. 20210

What To File

Though there are some differences in what various Federal agencies require in employment discrimination complaints, most require the same basic information. However, incomplete forms may be submitted and corrected later. Indeed, *even if for some reason important information about the discrimination is unknown, the incomplete complaint should be submitted before the time limit has expired.*

Complete complaints will include the following items

- name, address, and telephone number of the complaining party
- the basis for the discrimination (race, religion, sex,or national origin)
- description of the alleged discrimination
- the name and address of the organizations or persons believed to be responsible for the discrimination
- any other information which may help investigation of the complaint, such as the names of witnesses or of other persons subject to the same kind of discrimination.

The person should keep a record of the date the complaint was submitted and the addresses to which it was sent. After filing a complaint, and throughout any proceedings which follow, the person has the right to find out from the Federal agencies to which the complaint was sent what action is being taken on the complaint.

If the person is unable to find out what is happening to his complaint, or if he believes that a Federal agency is not doing all it should, he may contact

The United States Commission on Civil Rights
Washington, D.C. 20425

Persons may also write to this address if there is any other information they would like on Federal law or remedies for employment discrimination.

III
Private Employment
The Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) prohibits private employers, labor unions, and employment agencies from discriminating on the basis of race, color, religion, sex, or national origin.

Who Is Covered

In broad outline, the coverage of Title VII is as follows:

Employers are covered if they are engaged in an industry affecting interstate commerce and have 25 or more employees.

Labor unions are covered if they have 25 or more members, operate a hiring hall, or are engaged in an industry affecting interstate commerce.

Employment agencies are covered if they regularly obtain employees for an employer who is covered by Title VII. Covered employment agencies include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

Exemptions include employment by bona fide membership clubs and some jobs in certain religious or educational institutions.

What Is Required

Employers cannot

discriminate in hiring, discharging, compensation, or any other terms or conditions of employment

segregate, limit, or classify employees in any way which discriminatorily deprives them of employment opportunities or otherwise unfavorably affects them as employees

discriminate in admission to, or employment in, apprenticeship or other training or re-training opportunities

use employment ads which indicate any discriminatory preference or limitation

discriminate against a person because he has opposed unlawful employment practices or assisted in any proceeding under Title VII.

Labor Unions cannot

- exclude, expel, limit, segregate, or classify persons in any way which discriminatorily deprives them of employment opportunities or otherwise unfavorably affects them as employees or union members
- discriminate in referring, or failing to refer, for employment, or in otherwise limiting employment opportunities
- cause an employer to discriminate
- discriminate in admission to apprenticeship or other training or re-training opportunities
- use employment ads which indicate any discriminatory preference or limitation
- discriminate against a person because he has opposed unlawful employment practices or assisted in any proceeding under Title VII.

Employment Agencies cannot

- discriminate in classifying, referring, or otherwise assisting applicants for employment
- use employment ads which indicate any discriminatory preference or limitation
- discriminate against a person because he has opposed unlawful employment practices or assisted in any proceeding under Title VII.

Employers, labor unions, and employment agencies also must take affirmative action wherever necessary to remedy the effects of past discriminatory action illegal under Title VII, or to counteract discriminatory barriers to equal employment opportunity.

Exceptions to the above requirements include instances where sex, religion, or national origin—but not race or color—is a bona fide occupational qualification, and cases of preferential treatment favoring Indians living on or near reservations.

Records and Reports. Title VII, and regulations under it, require covered employers and unions annually to complete and submit forms showing the composition of their work force or membership and other data. Special annual reports also are required for apprenticeship programs. Regulations issued under Title VII impose various record keeping requirements, including a requirement that employers preserve for at least 6 months records reflecting applications and all other personnel actions. Any State or local laws which prohibit inquiries and record keeping with respect to race, color, national origin, or sex are overruled by these requirements of Federal law.

Equal Employment Opportunity Commission

To administer its provisions, Title VII establishes the Equal Employment

Opportunity Commission (EEOC), consisting of five Commissioners appointed by the President. EEOC investigates, and seeks to settle, complaints of discrimination. EEOC also makes studies, provides technical assistance, and carries on other activities designed to stimulate employers, unions, and employment agencies to develop equal employment opportunity policies.

Complaints and Suits

Any individual who believes he has been a victim of discrimination prohibited by Title VII may file a written complaint with

The Equal Employment Opportunity Commission
1800 G Street, N.W.
Washington, D.C. 20506

Use of the EEOC complaint form is preferable but not required. (See guidelines for making complaints of employment discrimination on page 3.). Complaint forms and instructions may be obtained from the above address.

Complaints must be filed either while the alleged discrimination is continuing or within 90 days after it has ended. EEOC is required by law to furnish a copy of the complaint to the employer, labor union, or employment agency which is charged with discrimination. Any complainant who fears reprisal for making his complaint can so state and request that his name not be disclosed. EEOC will then consider issuing a Commissioner complaint, which can be investigated without disclosing the identity of the complainant.

Complaints are investigated by EEOC, and where it finds discriminatory practices, EEOC attempts to obtain voluntary compliance.

Where State or local law provides effective remedies for employment discrimination, EEOC will refer the complaint to the State or local agency for action and so notify the complaining party. If the complaint is not resolved to the satisfaction of the complaining party in 60 days, EEOC can take over action on the complaint.

If, for any reason, EEOC has not obtained satisfactory relief for the complaining party within 60 days after the complaint is filed (or, where deferral is made to a State or local agency, within 60 days after the complaint has been referred back to EEOC), the complaining party can then prosecute his charge of employment discrimination by filing a suit in Federal court.

If the plaintiff cannot afford an attorney for this purpose, the court can appoint one to represent him. If it finds discrimination, the court can order any appropriate remedy, including reinstatement or hiring with back pay. The court may award to the winning party money to pay reasonable attorney's fees.

The Attorney General of the United States can bring suit where there is a pattern of discrimination, and can participate in suits brought by private parties.

EEOC cannot file suit, but can recommend suit by the Attorney General. As noted above, the individual EEOC Commissioners can file discrimination complaints on behalf of individuals, and these complaints are then treated like those filed by private citizens.

Executive Order 11246 Covering Federal Contractors and Subcontractors

Who Is Covered

Executive Order 11246[1] as amended by Executive Order 11375[2] (extending coverage to include discrimination on account of sex) prohibits employment discrimination by employers with Federal contracts, and their subcontractors, and by contractors and subcontractors in federally assisted construction.

Federal contracts. Coverage includes

- contractors with a Federal contract of more than $10,000
- contractors, and subcontractors regardless of tier, with a contract of more than $10,000 which contributes to the performance of a covered Federal contract.

Also covered are banks which are depositories of Federal funds or handle Federal Savings Bonds. Coverage includes all facilities of a contractor regardless of whether the facility is involved in performance of the Federal contract. Regulations provide a few special exceptions to the coverage described here.

Federally assisted construction. Coverage includes

- contractors, and subcontractors regardless of tier, on any construction which receives Federal financial assistance by grant, contract, loan, insurance, or guarantee.

Though *labor unions* are not directly subject to the requirements of the Executive order, their collective bargaining agreements and their membership and other practices may determine whether the Federal contractors with whom they deal are practicing nondiscrimination. Accordingly, unions often must be involved in steps taken toward nondiscrimination. The Executive order provides a penalty for noncompliance by unions—publication of their names—and recognizes that remedies in Federal suits against violations of the Executive order may need to encompass unions.

[1] 3 CFR 1964–65 Comp., p. 339.

[2] 3 CFR 1967 Comp. p. 320.

What Is Required

Contractors are required to practice nondiscrimination in all aspects of their employment activity. They are required to take affirmative action wherever necessary to remedy the effects of past discrimination or to counteract discriminatory barriers to equal employment opportunity.

Other specific obligations include the following:

- Prior to the award of any covered contract the contractor must certify that no facilities provided for employees are subject to segregated use, whether by employer policy or by employee practice.
- Contractors, with 50 or more employees on contracts of $50,000, are required to scrutinize tests and other screening procedures, in accordance with detailed regulations issued under the Executive order, and to make all changes necessary to assure that they are nondiscriminatory.
- Contractors must post notices announcing their nondiscrimination responsibilities in places conspicuous to employees and applicants, and representatives of each labor union with which they deal.
- In all advertisements for employees, contractors must state that there will be no discrimination in selection.
- Contractors must include the standard nondiscrimination provisions in all their covered subcontracts and—where required by regulation—file and cause each subcontractor to file annual employment information forms.

In addition, in *federally assisted construction*:

- Contractors are required to assure that minority persons share fairly in construction employment opportunities. This may include an obligation to assure that there is minority group representation in all trades on the job and in all phases of the work.

Enforcement

The agency with overall responsibility for nondiscrimination by Federal contractors is the Office of Federal Contract Compliance (OFCC) in the Department of Labor, but each Federal agency has the immediate responsibility for securing compliance on its own contracts. In some cases an agency is designated the "Compliance Agency" responsible for compliance by all Federal contractors—including those of other agencies—in a given industry or geographical area.

Reviews

Federal agency compliance programs are supposed to include a de-

termination of nondiscrimination for each contractor prior to the award of any covered contract.

In addition, contractors are subject to thorough onsite compliance reviews by the responsible Federal agency. Where discrimination is found in such a review, specific written commitment for its correction —giving the dates and details of action to be taken—is required. On formally advertised supply contracts of $1 million or more, such compliance reviews are required prior to award for the low bidder and for his first tier subcontractor (with a subcontract of $1 million or more).

Complaints

Any applicant or employee of a covered employer who feels he has been discriminated against in employment may file a complaint with

The Office of Federal Contract Compliance
U.S. Department of Labor
Washington, D.C. 20210

or with the contracting agency. At present, there is no one form for this purpose. (See guidelines for making complaints of employment discrimination on page 3.) Complaints should be filed either while the alleged discrimination is continuing or within 180 days after it has ended.

Within 60 days after receipt of the complaint (unless this time is extended by OFCC), the contracting agency must have investigated the complaint, sought to eliminate or remedy by informal or other means any discrimination found, and submitted a full record of the case to OFCC.

Sanctions

Where complaints or compliance reviews have disclosed discrimination which the contracting agency is unable to remedy by informal means, the following sanctions are available:

OFCC, or the contracting agency with its approval, can start proceedings—which include a hearing if the contractor so requests—to cancel the contract or debar the contractor from future Federal contracts. While the hearing is pending, OFCC may suspend performance on the contract.

OFCC, or the contracting agency with its approval, can publish the names of noncomplying contractors or unions.

OFCC or the contracting agency can recommend that the Attorney General file suit to enforce the contractor's obligations, or that appropriate proceedings be begun under Title VII of the Civil Rights Act of 1964.

National Labor Relations Act and Related Laws

The National Labor Relations Act and related laws (29 U.S.C. 151 et seq.) regulate the conduct of employers and unions. Discrimination on the basis of race, religion, or national origin may violate rights arising under these laws. Discrimination based on sex also may be prohibited under these statutes, although there have been no cases specifically raising this issue.

Who Is Covered

The National Labor Relations Act applies to most nonsupervisory employees, except for domestic servants, agricultural workers, and employees of railroads or airlines. The Railway Labor Act covers employees of railroads and airlines.

What Is Required

Although the law in this area is not settled, it may be unlawful under these acts:

For Unions

to exclude individuals discriminatorily from union membership, thereby causing them to lose job opportunities

to discriminate in the representation of union members or nonmembers in collective bargaining, in processing of grievances, or in other respects

to cause or attempt to cause employers to enter into discriminatory agreements or otherwise discriminate against union members or nonmembers.

For Employers

to participate with unions in the commission of any discriminatory practices unlawful under these acts.

to practice discrimination in a manner which gives rise to racial or other divisions among employees, to the detriment of organized union activity.

Complaints aud Suits

Union members or other persons covered by the National Labor Relations Act who feel they may have been subject to discrimination prohibited by the National Labor Relations Act may file a complaint (or "charge") with

The General Counsel
National Labor Relations Board
Washington, D.C. 20570

or with any regional office of the National Labor Relations Board.

The National Labor Relations Board, which is required to take action against unfair labor practices, investigates the charge and, where it finds the charge justified, the Board itself takes on the burden of prosecuting it. There is an administrative process which ends in an order enforceable in court, providing relief against the discrimination. The charging party needs to take no further action once he has filed his charge.

Charges must be filed either while the alleged discrimination is continuing or within 6 months after it has ended. (See guidelines for making complaints of employment discrimination on page 3). Before filing his charge, the complainant may wish to seek relief through company or union procedures, but is not required to do so.

Also, an individual can himself file suit in Federal court against discrimination unlawful under the National Labor Relations Act or the Railway Labor Act. Such suits may involve rights arising under related statutes as well, such as the right under Section 301 of the Labor Management Relations Act (29 U.S.C. 185) to obtain relief against an employer for discrimination in breach of contract.

Other Sanctions

Based upon a finding of union discrimination, the National Labor Relations Board is empowered to withdraw from offending unions various protections which are afforded by the National Labor Relations Act. The Board can lift or refuse certification, lift or refuse exclusive representative status, or refuse to require an employer to bargain with the union.

Other Federal Law

There may be, in specific cases, various other sources of Federal right or remedy relating to discrimination on account of race, religion, sex, or national origin in private employment. Six of these are mentioned here.

SECTION 1981 of the Civil Rights Act of 1870 (42 U.S.C. 1981)

This law provides that all persons shall have the same right as is enjoyed by "white citizens" to enter into contracts. This may give individuals who have been discriminated against on account of race by unions or by employers, and therefore deprived of equal employment opportunity, a right to sue in Federal or State court and obtain appropriate relief.

The United States Constitution

Though the equal protection clause of the 14th amendment to the Constitution (and the similar guarantee of the fifth amendment) apply in terms only to action by Federal, State, or local governments, there are many activities which are thought of as private but which in fact are treated as governmental action subject to the nondiscrimination requirements of the Constitution.

There is support for the view, for example, that labor unions cannot constitutionally receive the sanction and support of Government, and at the same time practice discrimination. There is similarly support for the view that employers, in some cases at least, cannot constitutionally participate in and enjoy the fruits of public business as Government contractors while practicing discrimination in employment.

Individuals may sue in court and obtain relief against discrimination in violation of their rights under the Constitution. Title IX of the Civil Rights Act of 1964 authorizes the Attorney General to participate in such suits (when based on discrimination on account of race, religion, or national origin in violation of the 14th amendment). Relief might include an order forbidding the Government to permit work to be performed on its contracts by specified contractors or unions until they cease discriminating.

The Civil Rights Act of 1968[1]

Title I of the Civil Rights Act of 1968 makes it a Federal crime, punishable by fine and imprisonment, to intimidate, through use of force or

[1] Pub. L. No. 90-284 (April 11, 1968).

threat of force, any person on account of race, color, religion, or national origin, because he is or was enjoying or seeking to enjoy the benefits of employment, or the services of any union or employment agency.

Any person wishing to report a violation of Title I should describe the matter in a complaint (see guidelines for making complaints on page 3) to

The Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Also, particularly where immediate action is necessary, persons may report the matter to the local office of the Federal Bureau of Investigation and their local United States Attorney.

The Fair Labor Standards Act of 1938 as amended by the Equal Pay Act of 1963.[2]

The Federal Equal Pay Act requires that all employers subject to Federal minimum wage provisions give equal pay to men and women for equal work. Any person who believes that he or she has been paid less, because of his or her sex, for equal work on a job requiring equal skill, effort, and responsibility and performed under similar working conditions as a higher paying job may file a complaint with

The Wage and Hour and Public Contract Division
U.S. Department of Labor
Washington, D.C. 20210

or with any field or regional office of the Division.

Regulations of the Bureau of Apprenticeship and Training[3]

Apprenticeship and training programs which are registered with the Bureau of Apprenticeship and Training, an agency within the United States Department of Labor, are subject to special nondiscrimination requirements. Regulations issued by the Secretary of Labor require nondiscrimination on the basis of race, creed, color, sex, or national origin in all phases of selection and conduct of the program, including employment during the program. Covered programs are subject to thorough field compliance reviews by Bureau personnel.

Complaints. Any applicant, trainee, or apprentice in a covered program who believes that he has been discriminated against may file a complaint with

[2] 29 U.S.C. § 206 (1963), amending c. 676, § 6; 52 Stat. 1062 (1938).

[3] 29 CFR Part 30.

The Bureau of Apprenticeship and Training
United States Department of Labor
Washington, D.C. 20210

or with any field representative of the Bureau. (See guidelines for making complaints of employment discrimination on page 3). Complaints should be filed within 180 days after the alleged discrimination has taken place.

If the Bureau is unable to achieve nondiscrimination by voluntary means, it is empowered to take away the registered status of the apprenticeship program.

Title VI of the Civil Rights Act of 1964 (42 USC 2000d)

Title VI prohibits discrimination based on race, color, or national origin in programs or activities which receive Federal assistance. However, Title VI prohibits *employment* discrimination in federally assisted programs or activities *only* if

- a primary purpose of the Federal assistance is to provide employment, such as in apprenticeship, training, work-study, or similar programs, *or*
- the discriminatory employment practices tend to result in discriminatory or unequal treatment for persons who are or who should be benefiting from the program or activity.

Complaint of discrimination in programs covered by Title VI should be made to the regional or national office of the Federal agency administering the program. (See guidelines for making complaints of employment discrimination on page 3.).

If the Federal agency is unable to achieve nondiscrimination by voluntary means, it may start proceedings leading to termination of the Federal assistance.

IV
Public Employment
Federal Government

It is the policy of the Federal Government to provide equal opportunity in Federal employment for all persons regardless of race, color, religion, sex, or national origin. All employees and applicants in the executive branch and those in the competitive service in the legislative and judicial branches are covered by nondiscrimination requirements set forth in Executitve Order 11478 [1] and by regulations of the Civil Service Commission.[2] The rules require continuing positive programs to assure that all practices are nondiscriminatory.

Overall supervision and leadership in the Government's program of nondiscrimination in employment is the responsibility of the Civil Service Commission. Each agency, however, must conduct a campaign to assure nondiscrimination in personnel practices and working conditions for those under its jurisdiction. Steps the agencies are required to take include designation of a Director of Equal Employment Opportunity and equal employment opportunity officers and counselors, collection of statistical information concerning employment of minority persons, reappraisal of job structures, adoption of special recruitment and training measures, and establishment of procedures for dealing with complaints of discrimination. Agencies also must cooperate at the community level with schools and other public and private groups to improve employment opportunities and community conditions that affect employability.

Employees or applicants for employment with the Federal Government who have complaints of discrimination must present them to the agency's "equal employment opportunity counselor" within 15 days after occurrence of the alleged discrimination. (This time limit can be extended for good cause.) The equal employment opportunity counselor seeks to resolve the matter informally and advises the complainant of his rights. If dissatisfied, the complainant may thereafter file a formal written complaint with the agency's equal employment opportunity officer. The complaint is investigated, and another attempt at informal settlement is then made. If this attempt is unsuccessful, the complainant may then request a hearing, after which the agency

[1] 3 CFR 1969 Comp., p. 134.

[2] 5 CFR Part 713.

makes a final decision on the complaint. The complainant can appeal this final decision to the Civil Service Commission.

The Constitution of the United States requires nondiscrimination by the Federal Government in all its activities, including employment. Under the Constitution, a person discriminated against in employment by the Federal Government is entitled to sue in Federal or State court for relief.

State and Local Government

State and local governments are required by the 14th amendment to the United States Constitution to practice nondiscrimination in employment. A person discriminated against in employment by a State or local government can sue for relief in Federal or State court. The Attorney General is authorized by Title IX (42 U.S.C. 2000h) of the Civil Rights Act of 1964 to join in such a suit when discrimination is based on race, color, religion, or national origin. He must also certify that it is of general public importance.

In order to receive Federal assistance under certain grant-in-aid programs, States must establish a merit system of personnel administration covering personnel engaged in administration of the assisted programs.[1] Such programs generally include welfare assistance, employment service and unemployment compensation, public health services, and civil defense activities. In some States, merit systems have been extended as well to other personnel.

To satisfy Federal standards, merit systems must include job classification and compensation plans for all covered positions, and apply merit standards in recruitment, appointment, promotion, separation, and layoffs. The merit plans must prohibit discrimination because of race, national origin, political or religious opinion, and other nonmerit factors.

The Federal Government is responsible for determining whether there is effective compliance with these Federal merit system standards with respect to covered grant-in-aid programs. Although the Federal grant-in-aid agencies do not act as a review tribunal for individual State employee complaints, they do review State and local personnel administration. If such reviews reveal a pattern of violation, or otherwise raise a serious question of compliance, this can lead to the withholding of grants to the State.

Complaints by employees or applicants in agencies covered by a merit system are normally handled by the State or local personnel board or civil service commission, or by a personnel board or council responsible specifically for the programs which receive Federal grant-in-aid assistance.

Time limits for filing complaints, or appeals from unfavorable decision on complaints, are set by State or local law.

The requirements of Title VI (described on page 18) with respect to employment nondiscrimination in programs receiving Federal assistance also apply to employees in State and local government who are

[1] Regulations appear at 45 CFR Part 70.

connected with federally assisted programs. Frequently covered by Title VI are professional staff in school systems and in work assistance programs.

State or local government agencies which participate in work under Federal contract or in federally assisted construction are subject to the same nondiscrimination requirements under Executive Order 11246 (discussed beginning on page 11) as are private employers, except that State and local agencies are exempted from requirements relating to written reports and to affirmative action plans.

V
Private Or Public Employment:

Affirmative Steps Toward Equal Employment Opportunity

As noted in the first section of this booklet, nondiscrimination in employment under Federal law means more than refraining from deliberate acts of discrimination. The duty of nondiscrimination carries with it the duty to take positive steps to assure that current practices are nondiscriminatory, and that any continuing effects of past discrimination are remedied.

There is no single formula for defining the affirmative action measures which a given employer should adopt. However, since barriers to equal employment opportunity—such as those described in the first section of this booklet—almost always exist wherever there are substantial numbers of minority persons, a correspondingly wide need exists for affirmative action measures to counteract these barriers and to remedy their effects.[1]

Every affirmative action program should be appraised in terms of its effectiveness. The most direct measure of effectiveness is the *results* the program produces in terms of minority persons actually trained, hired, or promoted. The relevance of results is twofold. First, where an employer has restricted the employment or advancement of minority persons by failing to overcome barriers to equal employment opportunity, the wrongful consequences of this are remedied only with the actual employment and advancement of minority persons. Second, just as the success of a company's program to increase the sale of its product is evaluated in terms of actual increases in sales, so the most realistic basis for evaluating a program to increase opportunity for minority persons is in terms of actual impact upon minority persons.

[1] Every employer should adopt a program of affirmative action without waiting for its affirmative action obligations to be precisely defined in judicial or administrative enforcement proceedings. This has been recognized by employers who have voluntarily established their own equal opportunity programs and have joined in programs such as the National Alliance of Businessmen, an organization which administers a nationwide program for the placement of the "hardcore" unemployed.

The importance of planning and evaluating affirmative action programs in terms of results is widely recognized. For example, Federal contractors must include in their plans of affirmative action "specific goals and time tables" for the correction of discriminatory practices and patterns (41 CFR 60–1.40), and the Plans for Progress organization (referred to in the preceding footnote) has included in its published "Affirmative Action Guidelines", a section entitled "Establishment of Company Goals and Objectives by Division, Department, Location, and Job Classification; Including Target Completion Date." [2]

Employers have many resources to draw upon in designing and carrying out their programs of affirmative action. In addition to technical assistance from the Equal Employment Opportunity Commission (and, in the case of Government contractors, from the Office of Federal Contract Compliance), a number of Federal and State programs provide training and other assistance in the employment of persons previously excluded from the mainstream of employment opportunity. Also, in many communities there are now cooperative efforts—bringing together public and private resources—geared to achieving equal employment opportunity for minority persons and "hardcore" unemployed.

There follows a sampling of the kind of measures which programs of affirmative action should contain. Each one of these measures can help overcome barriers to equal employment opportunity. In addition, employers with discriminatorily created patterns of minority utilization should use these measures to undo the effects of past discrimination.

It is emphasized that the following list of affirmative action measures is illustrative, not exhaustive. No exhaustive list would be possible, both because special remedies may be necessary to correct particular discriminatory practices or patterns and because new methods of affirmative action constantly are being developed.

[2] This section provided:

"C. Goals should be significant, measurable and attainable.

D. Goals should be specific both for planned results and timetable (examples).

—Completely desegregate facilities by October 1, 1968.

—Increase flow of minority applicants for sales positions by at least 35 percent by December 1, 1968.

—New York office plans to hire 20 sales representatives by June 1, 1969. Ten of the 20 will be minorities. Six of the 10 will be Negro.

—Fifteen percent of employees promoted into supervisory positions in 1969 will be minorities."

Recruitment

a. Maintain continuing communication with potential minority applicants in the job area by means of the State employment service and schools, colleges, community agencies, community leaders,

minority organizations, publication, and other sources of contact with minority persons.

b. Thoroughly inform such sources about the employer's recruiting and selecting procedures. Provide such sources with complete and accurate descriptions of the positions for which openings may from time to time occur, and requirements for such positions. Supplement this with a periodic statement of projected openings, and with statements of unprojected openings as they arise.

c. Encourage, accept, and file minority applications or transfer requests even when there are no current openings. As applicable openings arise, draw upon this file of applications before considering persons subsequently applying.

d. Provide entry-level training for applicants or new employees, and participate in Federal, State, or private and cooperative programs for placement and training of minority persons or the "hardcore" unemployed.

e. Institute work-study plans, in which minority persons are employed part-time while studying or otherwise seeking to satisfy employment requirements; this includes summertime employment for high school and college students.

f. Where possible, structure work so as to give rise to jobs, particularly entry-level jobs, which are suitable for minority persons available for employment.

g. Invite minority persons to tour employment facilities; explain to them employment opportunities and the equal opportunity program in effect.

h. Familiarize minority applicants, or potential applicants, with the selection process. Provide them with sample questions in advance of an examination. At least for the simpler jobs, provide an opportunity to take practice examinations.

i. Make information on the affirmative action program and minority employment by the employer available on request to employees, to minority leaders in the job area, and to others with a legitimate interest in nondiscrimination by the employer.

j. Work actively with predominantly minority schools and colleges in the area to establish curriculums which will provide minority graduates with the skills necessary to fulfill the employer's manpower requirements.

k. Inform private employment agencies whose services are used that referrals of minority persons are expected and that the employer cannot use an agency whose services are not effectively open to minority persons.

l. Inform each minority applicant of the basis for action taken on his application. This includes detail on the basis for rejection, including

the results of tests and interviews. Suggest to rejected minority applicants possible methods for remedying disqualifying factors.

m. Maintain a file, with nonminority-minority classification, on each applicant showing the specific grounds for rejection or passing over of the applicant.

Selection

a. Take immediate steps to assure that tests used for selecting or placing applicants are demonstrated (in accordance with standards such as those published by EEOC and OFCC) to be valid in forecasting job performance of minority persons.

b. Thoroughly analyze the requirements of each job, and assure that selection criteria such as education, experience, and aptitude, and disabilities stemming from records of arrest or conviction, are essential to the needs of the job.

c. Pending validation of tests or other selection criteria, discontinue the use of those which screen out a disproportionate number of minority applicants.

d. Make increased use of the probationary period, affording an opportunity for on-the-job training and enabling the applicant's ability to be judged on the basis of performance.

Hiring, Placement, and Promotion

a. Make available to minority applicants and employees a complete and accurate description of positions for which they may be eligible, together with position requirements.

b. Coordinate the employment and placement activities of the employer's various components or facilities, and consider for positions throughout the organization minority persons who apply or request transfer.

c. Announce all position openings in a manner which brings them to the attention of minority employees and makes clear that minority persons are eligible and encouraged to apply.

d. Recruit and place minority employees in positions or departments with low minority representation, particularly in white-collar, sales, and policy-making positions.

e. Place minority persons among those who deal with persons applying for employment, with clientele, or with other members of the public, in order to publicize the employer's equal opportunity policies.

f. Provide training opportunities for minority employees, including special training programs and temporary work experience assignments in other positions or areas work.

g. Individually appraise the promotion potential and training needs of minority employees, and take action to facilitate advancement.

h. Establish counseling and similar services, and draw upon services available in the community, to assist new or prospective minority employees to deal with logistical problems such as transportation or housing, and with other problems involved in adjusting to the job.

i. Admit minority candidates into management training programs.

Discipline

In case of proposed disciplinary action, inform the employee of the alleged infraction and afford an opportunity for rebuttal. If the rebuttal is deemed unsatisfactory, clearly state the reasons why.

Facilities

Assure that facilities, including all work-related facilities and those used in employer-sponsored recreational or similar activities, are not subject to segregated use, whether by official policy or by employee practice.

Plans and Review

a. Establish a separate written plan for each of the individual components of the organization, tailored to its special needs.

b. Make periodic inspection and review of employment practices and minority employment at each such component; make adjustments in the written plans wherever needed.

c. Maintain, and periodically review, records—kept apart from individual personnel jackets or other records in regular use—containing for the period covered, and indicating nonminority-minority classifications and the positions involved, complete data on inquiries, applications, hires, rejections, promotions, terminations, and other personnel actions.

d. Maintain, and periodically review, data on nonminority-minority distribution in the work force, in terms of job, department, and other relevant classifications such as line of progression.

e. Maintain a record, with nonminority-minority classification, of applicants by source of referral and regularly review the effect of each source upon minority utilization.

f. Regularly interview minority employees upon termination to determine whether discrimination has played a role in the termination.

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